

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA, and
MARK SHELDON, as Commissioner for the
COMMONWEALTH OF AUSTRALIA,
Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES FOW-
LER and JOHN L. McLEAN, as Trustee in
Bankruptcy of PATTERSON-MacDON-
ALD SHIPBUILDING COMPANY, a Cor-
poration, Bankrupt,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

FILED

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F. D. MONCOTTON

CLERK

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COMMONWEALTH OF AUSTRALIA, and
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the Western District of Washington, Northern Division.

6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

Order of Adjudication.

At Seattle, in said District, on the nineteenth day of March, 1920, before the Honorable Jeremiah Neterer, Judge of said Court in Bankruptcy, the

*Page-number appearing at foot of page of original certified Transcript of Record.

petition of Patterson-MacDonald Shipbuilding Company, a corporation, that it be adjudged a bankrupt within the true intent and meaning of the Act of Congress relating to bankruptcy, having been heard and duly considered, said Patterson-MacDonald Shipbuilding Company, a corporation, is hereby declared and adjudged bankrupt accordingly.

WITNESS the Honorable JEREMIAH NETERER, Judge of said Court, and the seal thereof at Seattle, in said District, on the nineteenth day of March, 1920.

F. M. HARSHBERGER,
Clerk.

By P. A. Page,
Deputy.

ENTER: JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1920. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [2]

In the District Court of the United States for the Western District of Washington, Northern Division.

6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation. Bankrupt.

Order of Reference.

WHEREAS, the Patterson-MacDonald Ship-building Company, a corporation, of Seattle, in the County of King, and District aforesaid, was on the nineteenth day of March, 1920, duly adjudged a bankrupt upon a petition filed in this Court by it on the nineteenth day of March, 1920, according to the provisions of the Act of Congress relating to bankruptcy,—

IT WAS THEREUPON ORDERED that said matter be referred to Cicero R. Hawkins, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said Act; and that the said Patterson-MacDonald Ship-building Company shall attend the aforesaid referee on the 19th day of March, 1920, at his office, 1204 L. C. Smith Building, Seattle, Washington, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to the said bankrupt.

WITNESS the Honorable JEREMIAH NETERER, Judge of the said Court, and the seal thereof at Seattle, in said District, on the nineteenth day of March, 1920.

F. M. HARSHBERGER,

Clerk.

By P. A. Page,

Deputy.

ENTER: JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 19, 1920. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [3]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

Order Appointing C. R. Hawkins Special Master in Chancery.

Upon the stipulation of the attorneys for the trustee in bankruptcy and of the attorneys for Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America, it is hereby

ORDERED that C. R. Hawkins be and he hereby is appointed a special master in chancery to take evidence and make findings upon the questions arising out of the proof of secured claim filed by Mark Sheldon, as commissioner for the Commonwealth of Australia in the United States of America, and the objections thereto by the trustee in bankruptcy and submit his findings and conclusions to this court in the same manner as if sitting as a referee in bankruptcy.

Done in open court this 12th day of October, 1920.

JEREMIAH NETERER,

Judge.

O. K.—BRONSON, ROBINSON & JONES,

Attys. for Trustee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 12, 1920. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [4]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

Referee's Certificate on the Petition for Review of Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America.

To Honorable JEREMIAH NETERER, Judge of the Above-entitled Court:

I, C. R. Hawkins, one of the referees of said court in bankruptcy, do hereby certify that during the course of the proceedings in said cause before me, to wit, on the 7th day of September, 1921, the trustee filed herein his report and petition in which, among other things, he reports as follows, to wit:

“In the controversy between the trustee and the Australian Government, pending before Hon. C. R. Hawkins as Special Master in chancery, there have been two matters submitted to arbitration. One of these was a dispute as to who should pay the cost of certain stores and equipment amounting to approximately \$109,000, which it was agreed by the parties in their contract of March 31, 1919, should be submitted to James Fowler of Seattle for determination. This matter was duly submitted to James Fowler, and considered by him, and an award was made, finding that the bankrupt should stand approximately \$43,000, and the Australian Government approximately \$75,000 of the cost of such items in dispute. Mr. Fowler has now submitted to your trustee his bill for services as arbitrator in this connection in the sum of \$1000, and your trustee believes that this is a reasonable sum for the services of the arbitrator in this connection, and your trustee should be authorized and directed to pay one-half of said amount, as the trustee's share of said expense.

The other matter submitted to arbitration was that of the bankrupt's claim for allowance from the Australian Government on account of work and materials furnished extra to its contract, involving matters in dispute of approximately \$1,114,944.40 which question was referred to a board of arbitrators consisting of Frank Walker, selected by the Australian Gov-

ernment, Frank E. Burns, selected by the Trustee, and W. C. Dawson, selected by the said [5] Walker and Burns. These arbitrators held numerous and lengthy hearings, examined a great amount of evidence, and considered the case very thoroughly, and have made an award finding that the bankrupt is entitled to an allowance from the Australian Government for work done and materials furnished extra to its contract, in the sum of \$1,028,458.66. Under the arrangement for selection of these arbitrators and holding of this arbitration, the trustee should pay the fees of Frank E. Burns, the arbitrator selected by him, and one-half of the fees of W. C. Dawson, the third member of the board; that said Frank E. Burns, and W. C. Dawson have submitted bills for said service in the sum of \$3000 each, and your trustee believes that said charges are fair and reasonable, and that he should be authorized and directed to pay the bill of the said Burns, and one-half of the bill of the said Dawson."

and in said petition asks that a creditors' meeting be called to consider and act upon the matters set out in said report.

Pursuant to said petition an order was made calling a meeting of creditors to be held on the 23d day of September, 1921, and notice of said meeting of creditors was mailed to all the creditors and parties in interest as is required by law; that among other things contained in said notice was the following:

“You are further NOTIFIED that the trustee reports that James Fowler, an arbitrator named in the contract between the Australian Government and the bankrupt corporation, has submitted his bill for services as such arbitrator in the sum of \$1000.00, one-half of which is chargeable against the bankrupt and the trustee recommends the payment thereof, also that Frank E. Burns, selected by the trustee and W. C. Dawson selected as the third man in the arbitration of the bankrupt’s claim for allowance against the Australian Government on account of work and material furnished extra to its contract, have submitted bills for said services in the sum of \$3000.00 each. The service of Frank E. Burns is chargeable to the trustee and one-half of the service of W. C. Dawson is chargeable to the trustee. The trustee recommends the payment of the bills for such services as submitted.”

That at said meeting of creditors, upon the consideration of the matter of the allowances of compensation to the arbitrators mentioned in the trustee’s report and petition and in the notice mailed to creditors, an objection was made on behalf of Mark [6] Sheldon as Commissioner of the Commonwealth of Australia in the United States of America, the Martin General Agency and Aero Alarm Co. on the ground that no compensation whatever could properly be allowed to said arbitrators out of the estate of the bankrupt. No objection whatever was made to the amount of the

allowance asked for by said arbitrators and recommended by the trustee, and upon inquiry by the referee it was expressly stated by Mr. Shank, representing the Commonwealth of Australia, that he considered the amounts asked for by the respective arbitrators and recommended by the trustee, reasonable if any compensation was to be allowed, but that it was his contention that no allowance could be made to said arbitrators out of the estate of the bankrupt.

After due consideration of the objections made, it was announced by the referee that allowances would be made to each of said arbitrators in the sum recommended by the trustee, and subsequently thereto, on the 21st day of October, 1921, an order was made, subject to the approval of the Judge of this court, authorizing and directing the trustee to pay to James Fowler, one-half of his bill for services rendered as arbitrator in the matter submitted to him for arbitration in the sum of \$500.00; to F. E. Burns for his services as arbitrator in the matter submitted to him, W. C. Dawson and Frank Walker, the whole amount of his bill in the sum of \$3000.00, and to W. C. Dawson, one of the arbitrators in said matter, one-half of his bill for services in said arbitration in the sum of \$1500.00.

The said Commissioner for the Commonwealth of Australia feeling aggrieved at said order filed his petition herein for a review of said order, which was granted.

The only questions presented for review are:

First: Whether James Fowler, who was selected

and named as an arbitrator of certain questions in dispute between the parties in this controversy, by said parties [7] themselves, by an agreement dated March 31st, 1919, having performed the services required of him as said arbitrator, is entitled to a reasonable compensation therefor, and whether the trustee in bankruptcy may properly be authorized and directed to pay from the funds of the estate one-half thereof.

Second: Whether Frank E. Burns, selected as an arbitrator by the trustee in bankruptcy, and W. C. Dawson, selected as the third man on the Board of Arbitrators by said Frank E. Burns and Frank Walker, the arbitrator selected by said Commissioner of the Australian Government, to arbitrate certain questions in dispute between said parties as is more fully set out in the findings contained in the order complained of herein, having performed the services required of them are entitled to reasonable compensation therefor, and whether the trustee in bankruptcy may properly be authorized and directed to pay the entire sum found to be a reasonable compensation for the services of said Burns and one-half of the sum found to be a reasonable compensation for the services rendered by said Dawson, out of the funds belonging to said estate.

It was the contention of the Australian Government before me, at said meeting of creditors, that the arbitrator James Fowler was not legally authorized to act as such arbitrator and make an award on the questions submitted to him and for that reason

no allowance of compensation whatever could be made for his services, notwithstanding the fact that both parties to the controversy availed themselves of his services as such arbitrator, appeared before him, submitted evidence and participated in the proceedings until the final conclusion and award.

For like reasons it was urged by said Commissioner of the Australian Government that no allowance whatever could be made to the arbitrators, Burns and Dawson, notwithstanding the fact that said Commissioner of the Australian Government, by Mr. Shank, his attorney, selected Mr. Frank Walker, one of the arbitrators in said matter, who, together with Mr. Burns, selected by the trustee, proceeded to name W. C. Dawson on the board, as was provided by the contract between the parties, and after said board was organized both parties availed themselves of the services of said board, appeared before them, submitted evidence and participated in the proceedings throughout the inquiry until the said award of said [8] arbitrators was made and submitted.

The facts which are pertinent to a review of the questions presented are contained in the order complained of.

I was of the opinion that under all the facts of this case that the respective arbitrators having performed the services for which they were selected and employed were entitled to a reasonable compensation for the services rendered, and as it appeared that the trustee and creditors were all of the opinion that the amount asked for by the re-

spective arbitrators was only a fair and reasonable compensation for the services rendered, the order complained of was made.

I hand up herewith as the record in this case:

1. The order complained of, in which is set out all the facts material to the issues raised.
2. The petition for review.

Dated at Seattle, in said District, this 28th day of December, 1921.

Respectfully submitted,

C. R. HAWKINS,

Referee in Bankruptcy.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 29, 1921. F. M. Harshberger, Clerk. P. A. Page, Deputy. [9]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

Order for Disbursement.

This matter coming on for hearing at a creditors' meeting duly held upon the 23d day of September, 1921, at 1204 L. C. Smith Building, Seattle, Washington, at the hour of two o'clock P. M., and ad-

journments thereof, upon trustee's report and petition for authority to pay to James Fowler the sum of \$500, to F. E. Burns, the sum of \$3,000, and to W. C. Dawson, the sum of \$1,500, for *an* on account of services rendered the trustee and the estate of the above-named bankrupt, and it appearing that by a certain agreement dated March 31, 1919, entered into between the Australian Government and the bankrupt, it was provided that certain questions of stores and equipment in dispute between the parties, and the matter of which of the parties should pay for the same, should be decided by reference to the said James Fowler, and that said matters and questions, involving items in dispute amounting to approximately \$109,000, have been submitted to the said James Fowler for his determination, and considered by him, and an award has been made by him finding that the bankrupt should pay for approximately \$34,000 of the items in dispute, and that the Australian Government should pay for approximately \$75,000 of the items in dispute, and that the services of the same James Fowler have been rendered to, and received by the trustee and the estate in bankruptcy, and that the charges made by said James Fowler for such services amount to the sum of \$1,000, and such charge being expressly agreed to and recognized by all parties present as being fair and reasonable, and that one-half thereof should be borne by the trustee, [10]

And it further appearing that certain other matters in dispute between the bankrupt and the Aus-

tralian Government, represented and appearing by Mark Sheldon, its Commissioner, relating to work and materials claimed by the bankrupt to have been furnished extra to its contract with the Australian Government, and involving matters in dispute of approximately \$1,114,944.40, have heretofore, and pursuant to a provision contained in the contract between the said bankrupt and the Australian Government, been referred and submitted to a board of three arbitrators, consisting of Frank Walker, selected by the Australian Government, Frank E. Burns, selected by the trustee, and W. C. Dawson, selected by said Walker and Burns, which said arbitrators have held numerous and lengthy hearings and examined a great amount of evidence, and considered the case very thoroughly, and have made an award finding that the bankrupt is entitled to an allowance from the Australian Government for work done and materials furnished extra to its contract, in the sum of \$1,028,458.66, and that under the arrangement for the selection of said arbitrators and the holding of said arbitration, the trustee should pay the fees of Frank E. Burns, the arbitrator selected by him, and one-half of the fee of W. C. Dawson, third member of the board of arbitrators, and that the services of said arbitrators have been rendered to and accepted by the trustee and the estate of the above-named bankrupt, and it being expressly agreed and recognized by all parties present that the charges submitted by said arbitrators of \$3,000 on account of the fees of Frank E. Burns, and \$1500

on account of the fees of W. C. Dawson, are fair and reasonable amounts for the services rendered,

And no exception or objection being taken or made to the payment of said sums, except the objection of the Australian Government, Martin General Agency and Aero Automatic Alarm that such sums are not properly chargeable to the trustee and the estate of the bankrupt,

NOW, IT IS ORDERED that the trustee be and he hereby is [11] authorized and directed to execute and deliver his trustee's check, to be duly countersigned by the referee, to the following persons for the following items and amounts, to wit:

JAMES FOWLER:

One-half of bill for services rendered,\$ 500

F. E. BURNS:

Services as arbitrator\$3,000

W. C. DAWSON:

One-half of bill for services as arbitrator\$1,500

Dated in open court at Seattle in said district this 21 day of October, 1921.

C. R. HAWKINS,
Referee.

Approved:

_____,
Judge.

Filed this 21 day of Oct. 1921, at 10 o'clock A. M.
C. R. Hawkins, Referee. [12]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

Petition for Review.

The petition of Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America, respectfully represents:

FIRST: That heretofore on July 31, 1920, this petitioner duly presented his secured claim against the said bankrupt founded upon various breaches of a contract for the building by the bankrupt of ten ships for the petitioner, and thereafter the said trustee of the said bankrupt filed certain objections to the said claim.

SECOND: That thereafter on the 12th day of October, 1920, an order was duly entered by a judge of this court in this proceeding appointing C. R. Hawkins a special master to take evidence and make findings upon the questions arising out of the proof of said claim and objections thereto and to submit findings and conclusions to this court in the same manner as if sitting as a referee in bankruptcy.

THIRD: That pursuant to the said order parties appeared before the said C. R. Hawkins, as special master, [13] upon the 20th day of Oc-

tober, 1920, and this petitioner proceeded to prove his claim.

FOURTH: That during the progress of the said proof the said trustee objected to any further proceedings before the said special master until certain counterclaims of the trustee against this petitioner had been submitted to certain arbitrators to be appointed pursuant to certain clauses in the said contract, and thereupon the said master, over the objection of this petitioner, refused to proceed further with the said claim until the said matters had been submitted to arbitration.

FIFTH: That the trustee, without obtaining any order or authority from either the judge or the referee of this court, thereupon assumed to employ Frank E. Burns, W. C. Dawson and James Fowler as arbitrators, and the said persons so employed together with Frank Walker thereafter made certain awards and filed the same in this case, and thereafter presented to the said trustee bills for services in the following amounts:—Frank E. Burns \$3000.00; W. C. Dawson \$1500.00; James Fowler \$500.00.

SIXTH: That the said trustee duly filed a report in said cause recommending the payment of the said claims, and thereafter at a creditors' meeting duly held before the Hon. C. R. Hawkins, referee in bankruptcy, this petitioner duly made objections to the said claims as hereinafter set forth, but over the objections of this petitioner the said claims were approved and thereafter upon the 21st day of October, 1921, an order was entered by the

said referee authorizing the payment of said claims.
[14]

SEVENTH: This petitioner claims that the said ruling and order of the said referee is erroneous for the following reasons:

1. That the said trustee had no power or authority to employ arbitrators without the express order and direction of the bankruptcy court.

2. No order of the bankruptcy court was ever entered authorizing the employment of any arbitrators or authorizing the trustee to submit any question to arbitration.

3. The submission by the trustee of any question relating to the liquidation of this petitioner's claim to any other court or board of arbitrators was contrary to the express directions contained in the above-mentioned order appointing a special master to pass upon the said claim.

4. The awards of the said arbitrators are void upon their face.

5. The said arbitrators have rendered no beneficial service to the said trustee for the reason that the said awards have not yet been approved by this Court, but will be found by this Court upon objections which have been offered thereto by this petitioner to be void and of no force and effect.

EIGHTH: That this petitioner desires a review by the Judge of this court of the said order made by the said referee and files his petition therefor, and he therefore prays that the error complained of and the questions of law and fact raised

before the said referee and decided by him may be certified by the said referee to the district judge of this court that he may review the said order heretofore made and make an order setting aside the said order of payment, and that none of the said payments be made, and your petitioner ever prays.

MARK SHELDON,

As Commissioner for the Commonwealth of Australia in the United States of America. [15]

By SHANK, BELT & FAIRBROOK,

His Counsel.

Service of the within paper is hereby admitted this 28th day of October, 1921.

BRONSON, ROBINSON & JONES,

Attorneys for Trustee of Pat McDon.

Filed this 28 day of Oct. 1921, at 4 o'clock P. M.
C. R. Hawkins, Referee. [16]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

Order on Petition for Review.

This cause came on to be heard at this term upon the petition of Mark Sheldon, as Commissioner for the Commonwealth of Australia in the United States of America, to review an order made and entered

by the Referee herein, upon the 21st day of October, 1921, allowing and ordering payment to James Fowler of the sum of Five Hundred Dollars (\$500.00), to F. E. Burns of the sum of Three Thousand Dollars (\$3,000.00), and to F. E. Dawson, of the sum of Fifteen Hundred Dollars, (\$1500.00), and was argued by counsel, and thereupon upon consideration thereof, it was,

ORDERED, ADJUDGED and DECREED as follows:

That said petition be and it hereby is denied, and the said order be and it hereby is approved, confirmed and sustained in every respect.

Done in open court this 26th day of Oct., 1922.

JEREMIAH NETERER,

Judge.

To the foregoing the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, excepts, and the exception is allowed. Oct. 26, 1922.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 26, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [17]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

COMMONWEALTH OF AUSTRALIA and
MARK SHELDON, as Commissioner for
the Commonwealth of Australia,
Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES
FOWLER, and JOHN L. MacLEAN, as
Trustee in Bankruptcy of PATTERSON-
MacDONALD SHIPBUILDING COM-
PANY, a Corporation, Bankrupt,
Appellees.

Petition for Appeal.

And now come the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, claimants in the above-mentioned proceeding, and say that on or about the 26th day of October, 1922, the said District Court entered an order herein in favor of the said appellees F. E. Burns, F. E. Dawson, James Fowler and John L. MacLean, as trustee in bankruptcy of Patterson-MacDonald Shipbuilding Company, a corporation, Bankrupt, and against these appel-

lants, wherein it denied the petition of these appellants to review an order made and entered by the referee herein allowing and ordering payment to the said F. E. Burns of the sum of \$3000.00, and to the said F. E. Dawson in the sum of \$1500.00, and to the said James Fowler in the sum of \$500.00, and approving the said payments, in which order and the proceedings had prior thereto in this cause certain errors were committed to [18] the prejudice of these appellants, all of which more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, these appellants hereby appeal from the said order to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in said assignment of errors, and pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals, for the Ninth Circuit.

Dated November 3d, 1922.

SHANK, BELT & FAIRBROOK,
Attorneys for Appellants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [19]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
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COMMONWEALTH OF AUSTRALIA and
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vs.

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FOWLER and JOHN L. MacLEAN, as
Trustee in Bankruptcy of PATTERSON-
MacDONALD SHIPBUILDING COM-
PANY, a Corporation, Bankrupt,
Appellees.

Assignment of Errors.

And now come the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, the claimants in the above-mentioned proceedings, and in connection with their appeal from the order entered in the above-entitled court and cause on the 26th day of October, 1922, approving the order of the referee ordering the payment to F. E. Burns in the sum of \$3000.00 and to F. E. Dawson in the sum of \$1500.00 and to James Fowler in the sum of \$500.00, assign the

following errors to be relied upon in their said appeal:

First. The Court erred in not sustaining the objections of these claimants to the order of the said referee on the ground that the said trustee had no power or authority to employ arbitrators without the express order and direction of the bankruptcy court. [20]

Second. The Court erred in not sustaining the objections of these claimants to the said order of the said referee on the ground that no order of the bankruptcy court was ever entered authorizing the employment of any arbitrators or authorizing the trustee to submit any question to arbitration.

Third. The Court erred in not sustaining the objections of these claimants to said order of the said referee on the ground that the submission by the trustee of any question relating to the liquidation of this petitioner's claim to any other court or board of arbitrators was contrary to the express directions contained in the order of this Court appointing a special master to pass upon the said claim.

Fourth. The Court erred in not sustaining the objections of these claimants to said order of the said referee on the ground that the awards of the said arbitrators are void upon their face.

Fifth. The Court erred in not sustaining the objections of these claimants to said order of the said referee on the ground that the said arbitrators have rendered no beneficial service to the said trustee.

Sixth. The Court erred in approving the order of the referee ordering payment to the said F. E. Burns in the sum of \$3,000.00, and to the said F. E. Dawson in the sum of \$1500.00, and to the said James Fowler in the sum of \$500.00.

SHANK, BELT & FAIRBROOK,
Attorneys for Claimants. [21]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA, and
MARK SHELDON, as Commissioner for the
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vs.

F. E. BURNS, F. E. DAWSON, JAMES FOW-
LER and JOHN L. McLEAN, as Trustee in
Bankruptcy of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt,

Appellees.

Order Allowing Appeal.

The Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, having presented their petition for an appeal from the order heretofore entered in the above-entitled court and cause on the 26th day of October, 1922, denying the petition of the said appellants to review an order made and entered by the referee herein allowing and ordering payment to the said F. E. Burns in the sum of \$3,000 and to the said F. E. Dawson in the sum of \$1,500, and to the said James Fowler in the sum of \$500, and approving the said payments, and an assignment of errors accompanying the same, and it appearing to the court that such petition should be allowed,—

This Court does hereby allow the said appeal to the United States Circuit Court of Appeals for the Ninth Circuit upon the filing of a bond in the sum of \$1,000.00, with good and sufficient surety to be approved by the court, said bond to be conditioned and to operate as both a cost and supersedeas bond.

Done in open court this 3d day of November, 1922.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [23]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, as principals, and the National Surety Company of New York, as surety, are held and firmly bound unto F. E. Burns, F. E. Dawson, James Fowler and John L. McLean as trustee in bankruptcy of Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt, in the full and just sum of one thousand dollars (\$1,000), to be paid to the said F. E. Burns, F. E. Dawson, James Fowler and John L. McLean, as trustee in bankruptcy of Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt, for which payment well and truly to be made, we bind ourselves and our successors, jointly and severally by these presents.

Sealed with our seals and dated this 3d day of November in the year of our Lord one thousand nine hundred and twenty-two.

WHEREAS, lately in the District Court of the United States for the Western District of Washington, Northern Division, in an action pending in said court in bankruptcy, entitled "In the Matter of Patterson-MacDonald Shipbuilding Company, a corporation, Bankrupt," an order was made and entered against the said principal obligors and in favor of the said obligees allowing and ordering payment to said F. E. Burns in the sum of \$3,000, and to said F. E. Dawson in the sum of \$1,500,

and to said James Fowler in the sum of \$500, and approving said payments in said sums respectively and the said principal obligors have sued out an appeal therefrom.

Now, the condition of the above obligation is such that if the said Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

COMMONWEALTH OF AUSTRALIA and
MARK SHELDON,

As Commissioner for the Commonwealth of Australia,

By SHANK, BELT & FAIRBROOK,
Their Attorneys.

NATIONAL SURETY COMPANY,

[Seal]

ROBT. WHYTE,

Attorney in Fact. [24]

Approved this 3d day of November A. D. 1922.

By the Court:

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 3, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [25]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON—MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

COMMONWEALTH OF AUSTRALIA and MARK SHELDON, as Commissioner for the Commonwealth of Australia,

Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES FOWLER and JOHN L. McLEAN, as Trustee in Bankruptcy of PATTERSON—MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt,

Appellees.

Statement of Evidence.

At a meeting of the creditors of the Patterson-MacDonald Shipbuilding Company, a corporation, Bankrupt, held on October 3, 1921, at 10:00 o'clock P. M., before the Honorable Cicero R. Hawkins, Referee in Bankruptcy, there were present the Referee, Messrs. Bronson, Robinson & Jones, representing the Trustee in Bankruptcy, Mr. Corwin S. Shank, representing the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, and representatives

of other creditors. Among other things, the following proceedings were had and done:

“Mr. JONES.—The next item is the report on the result of the arbitration before Captain Fowler. There was an item in controversy between the Australian Government and the Trustee, involving ship [26] stores and so forth, which was specifically covered in the contract of March 31st and by that contract referred to Captain Fowler for his decision. He arbitrated this and has found that the Australian Government should pay about seventy-four thousand dollars of those charges and the Patterson-MacDonald Shipbuilding Company about thirty-five thousand dollars. I do not know just how much time Captain Fowler put in on this, because I did not conduct this arbitration. Mr. Shank knows, and he knows whether or not the bill which Captain Fowler has rendered of a thousand dollars, is a reasonable bill. That should be apportioned, of course, one-half to the trustee and one-half to the Australian Government. I think, from what I know of the proceedings, that they took a considerable time and involved a great deal of technical knowledge, and I think the bill is a reasonable bill and I have heard no one object to it. I talked it over with Mr. Robinson, who handled the matter, and he thought that was a fair bill, and the trustee is asking for authority to pay Captain Fowler one-half of the amount of his charges.

Mr. SHANK.—I want to raise an objection to these fees which you are asking for the other arbi-

trators, if it is consistent with presenting the other matters at the same time, unless you want them separate I will raise objections to the whole thing.

Mr. JONES.—What objection do you have to Captain Fowler's bill, Mr. Shank?

Mr. SHANK.—On behalf of the Australian Government I desire to object to, not only the item of Captain Fowler, but the next item, I presume, which will be presented, that is the item of fees for Mr. Frank Burns and Mr. Dawson. The grounds of my objection to these fees are that this court has no jurisdiction to refer to or to accept the award of any arbitrators. This referee in bankruptcy was appointed [27] a Special Master by the order of Judge Neterer. That order is the order which fixes the jurisdiction of the Special Master. I will read that order, if the Court please. (Reading order signed by the Honorable Jeremiah Neterer on October 12, 1920.) My position, if the Court please, is that a court of bankruptcy is a court that finds its jurisdiction wholly in the statute. A Special Master is an officer of the District Court who finds his authority embraced entirely in the order creating that court. He has no jurisdiction to take evidence outside of the court nor submit anything to arbitration nor to any other court, but is the exclusive and sole judge of the things that are delegated to him by the order creating him. In other words, the Special Master was not in existence until this order was signed, and when this order was signed that was his sole and absolutely only power as embodied in that

order. Now, what has happened is that there have been two sets of arbitration which the Special Master has said was necessary under the contract, and as a consequence by that act and over our objections at the time we have here now presented bills indicating an expense of ten thousand dollars for so-called arbitration. Mr. Fowler submits a bill for a thousand dollars, five hundred dollars to the estate and I presume in due time he would submit it to the Australian Government, although he has not done so as yet, or submit the balance of it to this estate. As to the other three gentlemen, one has submitted a bill of three thousand dollars; the other has submitted to the estate a bill of fifteen hundred dollars and has submitted to the Australian Government a bill of fifteen hundred dollars, making his three thousand dollars; and the third arbitrator has submitted a bill to the Australian Government of three thousand dollars. I am advised that these bills will be presented to this estate also. Now, we have then this situation; an [28] expense of ten thousand dollars that somebody has got to pay, in the face of this order which creates in the Special Master a special duty authorizing him to do the very things that these arbitrators have attempted to do, and we are now face to face with the question of paying their bills. I raise the question that there was no jurisdiction for the creation of such boards. There is no authority for the creation of any such expense. Whatever services may have been rendered were services which this court could not take cognizance

of, because they were without his jurisdiction, and are not bills which should be paid by this estate. Now, as a matter of fact, I desire to call the court's attention to a couple of cases which I think are to the point. 'The United States Fidelity & Guaranty Company vs. Bray,' 225 U. S., 56 Law Edition. I am reading from page 1055 * * * The same question was raised and discussed, although not in a bankruptcy proceeding, but a well-considered case upon the exclusive jurisdiction of courts, in the case of District of Columbia vs. Bailey, 171 U. S. I am reading from 43 Law Edition page 124. * * * That is exactly the position we take here. First: no arbitration can be had in bankruptcy or growing out of bankruptcy, except such arbitration as is specifically provided by the Bankruptcy Act. This record shows that these arbitrations were not in accordance with and under the provisions of the Bankruptcy Act, but rather under the provisions of a contract made between other parties than the trustee himself, he coming in and saying, 'I assume that we should have that carried out,' and he proceeds then to seek the advice and counsel of a board of arbitrators and to bring that information back to this court, and this court base his decision on that. He has no power under the statute; he cannot make a contract himself without submitting the matter to this court, even such a special matter as [29] settling claims, and I think the statute provides that in all adjustments the creditors have some voice also. Now, without reading further from this decision, this gives the court my view;

first, that the court has no jurisdiction beyond the authority contained in that order creating the court. This order does not give this court any authority to accept the award of anybody, but authorizes and directs the special master to proceed and do the very things which these gentlemen now are presenting bills for doing. What I have said will apply not only to the request for the payment of the bill of Captain Fowler, but will be applied to the requests which will be made, undoubtedly, as they are contained in the petition, for the payment of the bills of Frank Burns and W. C. Dawson. I respectfully submit that this arbitration is null and void upon its face and that if these creditors pay this money out they are paying it out for nothing, and will place the very fund, and the only fund from which they can expect to get paid, in jeopardy because of the fact that they are dissipating the funds for accounts which are on their face void. I respectfully submit that this bill should not be allowed. * * *

Mr. JONES.—If your Honor please, it seems to me that both counsel who have spoken have approached this thing from a different angle than what is really the case. The theory is, as announced here, that this was an arbitration under the Bankruptcy Act or this was an arbitration pursuant to the Bankruptcy Act. This was not an arbitration pursuant to the Bankruptcy Act or under any provision of the Bankruptcy Act at all. The situation arose in this way: The Australian Government presented a claim which was unliqui-

dated: the trustee objected on various grounds, among them on the ground that the claim was unliquidated, and the counsel confessed that that was [30] a good objection and the claim should be liquidated. Now, the Bankruptcy Act provides that claims which are liquidated may be proven and unliquidated claims may be proven after they have been liquidated pursuant to the order of the court and they shall be liquidated in such manner as the court may direct. 'The court' there meaning either the referee or the district judge sitting as a court in bankruptcy. The court might declare or order that the claim should be liquidated in the case before the order in the court, or in any way, as the statute says, that the court may direct. The parties in this case stipulated that the liquidation proceedings here, instead of being heard before the superior court or the district judge, should be heard before your Honor as a special master. Now, it comes up on his complaint in that liquidation proceedings, and an objection is raised that he states no cause or action because he has not shown an offer to arbitrate as required by the contract upon which he is suing. Your Honor holds that that is a good objection and that without an arbitration your Honor will not proceed: and that is the general rule, that the plaintiff cannot maintain his suit unless he shows his offer to arbitrate, or some excuse for the failure, and certainly any legal objections that could lie against the claim would be held, and your Honor hold that he could not maintain his claim before you as special mas-

ter without complying with the terms of his contract. Counsel did not have to arbitrate if he did not want to, but in order to get a claim here which your Honor would entertain he goes into the arbitration; and the arbitration held before Captain Fowler has never been called in question. In fact, it was specifically provided for, and that arbitration was in process before the bankruptcy and before the application, and no one has ever questioned it, and counsel has [31] participated in that arbitration. This is not to be governed by cases passing on the authority of the trustee. The contract was made by Patterson-MacDonald, and the trustee takes the contract with all of its burdens. Suppose that the trustee had been attempting to bring a plenary suit against the Australian Government to recover damages on account of this contract and the Australian Government said, 'No, you have to arbitrate and we have to arbitrate.' The trustee stands in no better position than the bankrupt. He could not forego or refuse to arbitrate where the bankrupt would have to arbitrate, and what you are holding in one case would hold in the other. The argument of counsel that it is beyond the trustee's right—and the case which he quoted at length bore on the right of the commissioners to contract. There is no question here that Patterson-MacDonald had the right to make the contract, and this is an arbitration under the terms of that contract and it has no reference to the bankrupt, in so far as it provides for compromises or arbitration. Coun-

sel raised that point at the time, and the court ruled against him. The general order, to which Mr. Helsell refers, relates to arbitrations under that special provision of the Bankruptcy Act, and not under contract, and that would be correct in a proceeding of that kind, but this is not that kind of a proceeding; and that was all threshed out at the time of counsel's argument as to whether or not an arbitration should be had. In any event, it is too late for counsel to complain. The matter was raised before your Honor by objections and counsel took no objection nor appeal nor exception from that, and he went ahead with the arbitration and never contested it, and it is only when an adverse decision is rendered that he raises the question of jurisdiction. [32]

The trustee employed Mr. Fowler and has taken the benefit of his services and, to my mind, the argument that is made here, while it might be a pertinent argument on the matter of adopting the arbitrator's award, it is not pertinent on the question of their fees, because they have acted in good faith and the trustee has prosecuted this arbitration without the objection of anyone except the Australian Government, and the creditors never made any complaint and they have approved the action of the trustee in those respects, and it seems to me that, regardless of whether the arbitration were of benefit to the estate or not, the trustee would be bound to pay for those services which these gentlemen have rendered.

The REFEREE.—I do not think that the authorities that Mr. Shank reads from apply to a case of this kind. This is not a case where the trustee has contracted for an arbitration or made an agreement for arbitration. This is an arbitration that has its origin and the authority for the arbitration back in the contract that was made between the Patterson-MacDonald Shipbuilding Company before it became insolvent, and the Australian Government. They had the right to make that contract. That is not questioned, that those two parties that made this contract for the building of these ships had the right to provide that any differences that arose between them should be submitted to arbitration rather than to the court, and that they did. Now, the fact that there was a bankruptcy, is that to alter and abridge the terms of this contract? I do not understand that bankruptcy has that effect. It is urged that I was appointed special master here for the purpose of liquidating this claim. I take it that I was appointed with all the right to exercise all the rights that the United States District Court would have had in so far as it pertains to the liquidation. Now, suppose this case [33] had gone up before the United States District Court for liquidation and the demand had been made for arbitration. I take it—I think—I did think and I still think—that either party would have had the right to have had that question arbitrated; and the fact that the District Court appointed someone else to act for it, to receive the evidence and make findings and conclusions, did

not deprive that party of the right to do everything that the District Court would do under the same circumstances. He cannot make the final decree; but his findings, of course, are all subject to review and to the approval of the court; but I think it is the duty of the special master to do the very same things that the court would have had to have done if the matter had been liquidated before the United States District Court. Now, my impression is that this challenge to the jurisdiction is not well taken. I have no doubt that these men are entitled to compensation; whether the special master should fix it or whether the District Court should fix it might be a question—I mean whether the referee or the district court should fix it might be a question, and I would be glad if you could cite any authority on it; and so far as fixing the amount, if there is any objection to the amount as well as to the jurisdiction—is there, Mr. Shank? * * *

There certainly was never any objection that I heard of to the arbitration of Captain Fowler; that, as I understand, was already in process. It was not a question raised by either party.

Mr. SHANK.—No. The question as to Captain Fowler was not raised here. I think I would say this—

The REFEREE.—(Interposing.) It was agreed that he should act as arbitrator and he was named, I understand, by the contract itself.

Mr. SHANK.—Yes, by a supplementary contract.

[34]

The REFEREE.—I will make an order allowing

Captain Fowler five hundred dollars for his services.

Mr. JONES.—The next item referred to in the report is the report on the award of the arbitrators on the claim of the Australian Government. This claim as originally presented by Mr. Shank, was for about eleven hundred thousand dollars. The trustee set up counterclaims and setoffs to an equal or greater amount and mostly those involved items of so-called extras, which were referred to the arbitrators under the court's ruling and the arbitrators have found that the bankrupt is entitled to a claim against the Australian Government of \$1,028,458.66. Now, of those arbitrators one was selected, Mr. Frank Burns, by the trustee, and one was selected, I understand, by Mr. Shank, and those two selected Mr. Dawson, the third arbitrator. Mr. Shank and I had a conversation about this matter before those men were appointed, regarding the fees. Mr. Shank thought that the estate ought to agree to pay them for all of the arbitration, and I said I did not think so; that we would pay our man and one-half of the third, and it was finally agreed that that was the way it would be understood, and so I have reported here that under the arrangement that was made the trustee should pay for the arbitrator selected by him and one-half of the fees of the third arbitrator. The arbitrators put in their bills for three thousand dollars each, and I understand that some objection was raised on that question. The arbitration was begun in October or November of last year and terminated in June of

this year, and the arbitrators held something like thirty meetings. They considered a stack of evidence a foot or a foot and a half high, consisting of depositions and so forth, and I understood it was the theory—Mr. Walker said, ‘Well, we have held thirty meetings, and if I were going to put in my time at other work I would make at least one [35] hundred dollars a day for the time represented by each of those meetings,’ and they thought the bill ought to be three thousand dollars. The trustee and I had considered the matter, and we had thought that twenty-five hundred dollars was, probably, a fair fee, but when the bill came in for three thousand dollars we didn’t feel that we could haggle about the matter of five hundred dollars, especially in view of the fact that the arbitrators had rendered a decision so favorable to the estate, that for the trustee to turn around and squabble over that amount, did not look very dignified, and the trustee has recommended that this, in his judgment, is a fair item to be allowed. In proposition to the work that was done by Captain Fowler, they have done, probably, five or six times as much work and, of course, the amount involved is a great deal more, and it involved matters of technical knowledge that they were qualified to pass on and the ordinary layman would not be.

Mr. SHANK.—On behalf of the Australian Government I desire to interpose the same objections that I introduced with reference to the allowance of the fee to Captain Fowler, without repeating

them, and it will not be necessary for me to argue the questions again.

The REFEREE.—Do you also object to the amount of the allowance, if any allowance has to be made?

Mr. SHANK.—I think, if they are entitled to any fee at all, they are entitled to the amount they are asking for: this applies to the Fowler claim also.

The REFEREE.—Are there any objections to the amount by any of the creditors? If there is no objection on the part of any of the creditors other than has been stated here by the representatives of the Australian Government although they are objections to the allowance, he thinks this is a reasonable sum. It strikes me that it is rather a large sum and I would feel disposed that I ought to hear some testimony as to the value of those services, but if it is [36] satisfactory to all the creditors, why, of course, I do not feel that it is my place to inject my personal opinion of the matter, and if it is the desire of the creditors that they be allowed this amount, provided that they are entitled to anything, I shall make that allowance, because I believe that they are entitled to an allowance, and if this is considered by all of the creditors satisfactory, I will adopt those figures.”
[37]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

COMMONWEALTH OF AUSTRALIA and
MARK SHELDON, as Commissioner for
the Commonwealth of Australia,

Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES FOWLER and JOHN L. McLEAN, as Trustee in Bankruptcy of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt,

Appellees.

Certificate to Statement of Evidence.

It appearing that the within and foregoing statement of evidence was lodged in due time with the clerk of this court and that due and proper notice of such lodgment and of the time and place of the proposed settlement thereof was given to the attorneys for the appellees, and it appearing that the said statement is true, complete and properly prepared, it is therefore

ORDERED that the same be approved and settled and approved as a true, complete and properly

prepared statement of the evidence introduced in said cause reduced to narrative form.

Dated this 22d day of January, 1923.

JEREMIAH NETERER,
District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 22, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [38]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt.

COMMONWEALTH OF AUSTRALIA and MARK SHELDON, as Commissioner for the Commonwealth of Australia,

Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES FOWLER and JOHN L. McLEAN, as Trustee in Bankruptcy of PATTERSON-MacDONALD SHIPBUILDING COMPANY, a Corporation, Bankrupt,

Appellees.

Praeceptum for Record on Appeal.

To F. M. Harshberger, Clerk of said Court:

Will you kindly incorporate into the transcript of the record upon the appeal of the above-named appellants from the order entered in said court and cause upon the 26th day of October, 1922, approving the order of payment of arbitrators' fees to the above-named appellees Burns, Dawson and Fowler the following portion of the record, to wit:

- (1) Order of adjudication of bankruptcy.
- (2) Order of reference.
- (3) Order appointing C. R. Hawkins special master dated October 12, 1922.
- (4) Referee's certificate in matter of arbitrators' fees.
- (5) Order of referee for payment of arbitrators' fees sent up accompanying the said referee's certificate. [39]
- (6) Appellant's petition for review sent up accompanying said referee's certificate.
- (7) Order of court entered October 26, 1922, approving referee's order of payment.
- (8) Petition for appeal from said order.
- (9) Assignment of errors accompanying said petition.
- (10) Order allowing said appeal.
- (11) Bond on said appeal.
- (12) Citation on said appeal.
- (13) Statement of evidence accompanying said appeal.

Dated this 17th day of November, 1922.

SHANK, BELT & FAIRBROOK,

Attorneys for said Appellants.

Service of the within paper is hereby admitted
this 17th day of Nov. 1922.

BRONSON, ROBINSON & JONES,

Attorneys for Appellees.

[Indorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Nov. 20, 1922. F. M. Harshberger, Clerk.
By P. A. Page, Deputy. [39½]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 6361—IN BANKRUPTCY.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt,

COMMONWEALTH OF AUSTRALIA and
MARK SHELDON, as Commissioner for
the Commonwealth of Australia,

Appellants,

vs.

F. E. BURNS, F. E. DAWSON, JAMES FOW-
LER and JOHN L. McLEAN, as Trustee
in Bankruptcy of PATTERSON-Mac-
DONALD SHIPBUILDING COMPANY,
a Corporation, Bankrupt,

Appellees.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 391½, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for [40] the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred, and paid in my office by or on behalf of the petitioners and appellants herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828, R. S. U. S.) for making record, certificate or return	109 folios
at 15c	\$16.35
Certificate of Clerk to transcript of Record,	
4 folios at 15c60
Seal to said certificate20

I hereby certify that the above cost for preparing and certifying record, amounting to \$17.15, has been paid to me by attorneys for appellants.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 24th day of January, 1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [41]

Citation.

United States of America,—ss.

To F. E. Burns, F. E. Dawson, James Fowler and John L. McLean, as Trustee in Bankruptcy of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt:

You are hereby notified that in a certain cause in bankruptcy in the United States District Court of the United States for the Western District of Washington, Northern Division, entitled "In the Matter of Patterson-MacDonald Shipbuilding Company, a corporation, Bankrupt," an appeal has been allowed the Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, claimants therein, to the United States Circuit Court of Appeals for the Ninth Circuit, and

you are hereby cited and admonished to be and appear in said court at San Francisco on or before the 1st day of December, 1922, to show cause, if any there be, why the order appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, Northern Division, this 3d day of November A. D. 1922.

JEREMIAH NETERER,
United States District Judge. [42]

[Endorsed]: In Bankruptcy—No. 6361. United States District Court, for the Western District of Washington, Northern Division. In the Matter of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt. Citation (F. E. Burns et al). Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 9, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

Service of the within paper is hereby admitted this 3d day of November, 1922.

BRONSON, ROBINSON & JONES,
Attorneys for Appellees.

[Endorsed]: No. 3977. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt. Commonwealth of

Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, Appellants, vs. F. E. Burns, F. E. Dawson, James Fowler and John L. McLean, as Trustee in Bankruptcy of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 26, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corporation,
Bankrupt,

COMMONWEALTH OF AUSTRALIA et al.,
Appellants,

vs.

F. E. BURNS et al.,

Appellees.

Order Extending Time to and Including January 29, 1923, to File Record and Docket Cause.

Upon agreement of counsel for both parties in open court, and good and sufficient cause having been shown, it is hereby

ORDERED, ADJUDGED AND DECREED that the said appellants, Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, be and they hereby are allowed additional time up to and including the 29th day of January, 1923, in which to file in the United States Circuit Court of Appeals for the Ninth Circuit the record in this cause, being the appeal of the said appellants from the decree entered herein on the 26th day of October, 1922, in favor of the said appellees.

Done in open court this 23d day of January, 1923.

JEREMIAH NETERER,

District Judge.

[Endorsed]: In Bankruptcy—No. 6361. United States District Court for the Western District of Washington, Northern Division. In the Matter of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt. Order Extending Time.

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA et al.,
Appellants,
vs.

F. E. BURNS et al.,

Appellees.

**Order Extending Time to and Including January
20, 1923, to File Record and Docket Cause.**

Upon agreement of counsel for both parties in
open court, and good and sufficient cause having
been shown, it is hereby

ORDERED, ADJUDGED AND DECREED that
the said appellants, Commonwealth of Australia
and Mark Sheldon, as Commissioner for the Com-
monwealth of Australia, be and they hereby are
allowed additional time up to and including the 20th
day of January, 1923, in which to file in the United
States Circuit Court of Appeals for the Ninth Cir-
cuit the record in this cause, being the appeal of the
said appellants from the decree entered herein on
the 26th day of October, 1922, in favor of the said
appellees.

Done in open court this 11th day of December, 1922.

JEREMIAH NETERER,
District Judge.

[Endorsed]: In Bankruptcy—No. 6361. United States District Court for the Western District of Washington, Northern Division. In the Matter of Patterson-MacDonald Shipbuilding Co., etc., Bankrupt. Commonwealth of Australia et al., Appellants. F. E. Burns et al., Appellees. Order Extending Time. Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 11, 1922. F. M. Harshberger, Clerk. By P. A. Page, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corporation,
Bankrupt.

COMMONWEALTH OF AUSTRALIA et al.,
Appellants,

vs.

F. E. BURNS et al.,

Appellees.

**Order Extending Time to and Including December
22, 1922, to File Record and Docket Cause.**

Upon agreement of counsel for both parties in

court, and good and sufficient cause having been shown, it is hereby

ORDERED, ADJUDGED AND DECREED that the said appellants, Commonwealth of Australia and Mark Sheldon, as Commissioner for the Commonwealth of Australia, be and they hereby are allowed additional time up to and including the 22d day of December, 1922, in which to file in the United States Circuit Court of Appeals for the Ninth Circuit, the record in this cause, being the appeal of the said appellants from the decree entered herein on the 26th day of October, 1922, in favor of the said appellees.

Done in open court this 29th day of November, 1922.

JEREMIAH NETERER,

District Judge.

[Endorsed]: In Bankruptcy—No. 6361. United States District Court, for the Western District of Washington, Northern Division. In the Matter of Patterson-MacDonald Shipbuilding Company, Bankrupt. Order Extending Time. Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 29, 1922. F. M. Harshberger Clerk. By P. A. Page, Deputy.

No. 3977. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Jan. 29, 1923, to File Record and Docket Cause. Filed Jan. 26, 1923. F. D. Monckton, Clerk.